IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15446 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA

HONOURABLE MR.JUSTICE H.B.ANTANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

UNION OF INDIA & 1 - Petitioner(s)
Versus
R.MUTHU - EX-SUBSTITUTE PERMANENT WAY INSPECTOR - Respondent(s)

==========

Appearance :
MS MEGHA JANI for Petitioner(s) : 1 - 2.
MR DK PANDYA for Respondent(s) : 1,
MR JJ DAVE for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 09/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Heard Ms. Megha Jani learned advocate for the petitioners and Shri Dave for the respondent.

The petitioners have challenged in this petition the impugned judgment and order dated 2.3.2005 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short 'the Tribunal') in O.A. No. 280/2003 filed by the respondent – original applicant, whereby, the learned Tribunal allowed the application and directed the original respondents – present petitioners to re-engage the original applicant after medical examination within a period of three months from the date of receipt of a copy of the order.

This petition was filed after the period of three months of the order which was passed on 2.3.2005. It was filed before this Court on 21.7.2005 and moved for orders including stay order on 29.7.2005. Though there was a specific prayer of stay made in the petition, Division Bench of this Court has only issued 'Rule' on it, but no interim relief or stay against the impugned order passed by the

learned Tribunal was granted. In the circumstances, the petitioners were supposed to comply with the impugned order dated 2.3.2005 passed by the learned Tribunal but they granted stay to themselves though there was no stay granted in their favour by the Division Bench of this Court while admitting this petition. This must be viewed seriously.

There cannot be better case of bureaucratic approach than this one. In the instant case, poor respondent -original applicant was a casual labourer. He had as many as three rounds of litigation before the learned Tribunal and fortunately he succeeded in all the litigations. However, on one or other excuse, the petitioners were not ready or willing to comply with the order passed by the learned Tribunal. This is, in our considered opinion, gross contempt of the orders passed by the learned Tribunal. We could have suo-motu initiated contempt proceedings in the matter, but with a hope that now the petitioners will comply with the impugned order passed by the learned Tribunal, we do not think it fit to initiate any contempt proceedings.

It is clear from the impugned order passed by the learned Tribunal that while deciding earlier O.A.

No. 127/1995, the learned Tribunal directed the original respondents – present petitioners to re-engage the original applicant – present respondent. In spite of it, they have not re-engaged him on the excuse that there was a ban on re-engagement. This very argument advanced before the learned Tribunal was rejected by the learned Tribunal.

Under the circumstances, the learned Tribunal while allowing the last O.A. No. 280/2003 directed the original respondents - present petitioners to re-engage the original applicant – present respondent after medical examination within a period of three months from the date of receipt of the copy of the order which was received long back, but so far they have not re-engaged the original applicant – present respondent after medical examination.

This petition is labelled under both, Articles 226 and 227 of the Constitution of India, but strictly speaking it is a petition under Article 227 of the Constitution of India, the scope of which is narrow and limited. As held by the Hon'ble Supreme Court in number of cases, this Court cannot even correct either error on fact or law in its limited jurisdiction under Article 227 of the Constitution of

India. Unless there is a jurisdictional error, this Court would not interfere with such an order.

In view of the above discussion, this petition fails and is hereby rejected with a direction to the petitioners to comply with the impugned judgment and order passed by the learned Tribunal as early as possible and not later than 31.3.2007. Copy of this order be made available to both, Ms. Megha Jani learned advocate for the petitioners for its immediate implementation and Shri Dave learned advocate for respondent. Rule is discharged. No order as to costs.

(B.J. SHETHNA, J.)

(H.B. ANTANI, J.)

mandora/